UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,090	03/10/2004	Keijiro Take	249305US-6 DIV	2323

22850 7590 06/23/2005	EXAMINER
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.	PHAN, TRI H
1940 DUKE STREET	

	ART UNIT	PAPER NUMBER
ALEXANDRIA, VA 22314	2661	

DATE MAILED: 06/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO 90C (Rev 10/03)

	Application No.	Applicant(s)
Office Action Summary	10/796,090	TAKE, KEIJIRO
	Examiner	Art Unit	
	Tri H. Phan	2661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _25 March 2005_.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _3-6_ is/are pending in the application.

    4a) Of the above claim(s) _1 and 2_ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _3-6_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☒ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☒ Certified copies of the priority documents have been received in Application No. _09/156,703_

_(US6,477,158)_.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.

4)☒ Interview Summary (PTO-413) Paper No(s)/Mail Date. _4/7/2005_.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Response to Amendment/Arguments

1.   This Office Action is in response to the Amendment filed on March 25th, 2005. Claims 1-

2 are now canceled. Claims 3-6 are now pending in the application.

Claim Rejections - 35 USC § 103

2.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

5.   Claims 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Tanno et al.**

(U.S.6,078,572) in view of **Nakamura et al.** (U.S.5,740,168).

        - In regard to claims 3 and 5, **Tanno** discloses in Figs. 1-7, 10-13 and in the respective

portions of the specification about a base station used for the radio communication system

employing code division multiple access 'CDMA' for radio access with a plurality of mobiles

stations and providing multi-rate transmission (For example see Figs. 1, 10, 13; Abstract);

wherein the base station comprises a traffic control portion for deciding and transmitting the

spreading code and transmission timing (*"transmitting code and timing information"*; For

example see Figs. 4-7; col. 6, line 45 through col. 7, line 12) as the transmission permission

signal or on the basis of the state of traffic occurrence and usage as the indicating optimum

spreading code to the mobile station for using or "switching" (For example see col. 9, lines 21-

31; wherein the traffic control portion of the base station checks the state of traffic and utilization

for the decision of using the optimum transmission timing and spreading code, e.g. *"second

code"*, instead of the desired or preassigned spreading code, e.g. *"first code"*, being used by the

mobile station as transmission request signal through message channels). **Tanno** does disclose

about the base station in deciding the transmission timing and optimum spreading code for the

mobile station, but fails to explicitly disclose about the *"timing information including an integer

representing the frame"* at which the first code is switched to the second code. However, such

implementation is known in the art.

For example, **Nakamura** discloses in Figs. 2A-B, 4, 20A-B, 25 and in the respective

portions of the specification about the method and apparatus for switching radio links in the

mobile communication (For example see Abstract); wherein each transceiver unit of the base

station includes the switching timing set up unit, the switching timing information changing unit

(*"timing information sending unit"*), the spread code switching unit (*"code switch informing

unit"*) and the control unit (*"switching unit"*) as disclosed in Fig. 2B; for selecting and

transmitting the timing information and new spreading code (*"second code"*; wherein, it is

obvious that the being used spreading code is the *"first code"*) to the mobile station for switching

the spreading codes in synch (*"switching in synchronization"*) between the base station and the

mobile station, when detecting the link quality degradation, (For example see Figs. 4, 20A-B, 25;

col. 6, line 18 through col. 7, line 38). **Nakamura** further discloses about the use of unique

words in each frame for setting up the switching timing in prescribed frames, e.g. M and N

frames (For example see Figs. 4, 6-7; col. 8, line 64 through col. 9, line 12), or in frame number

(For example see Fig. 16; col. 14, lines 7-17), or in flag in each frame for period of time in

boundary of frames (For example see Figs. 8-15; col. 11, lines 50-59); wherein, it is obvious the

number or sequence of frames is in integer (*"timing information including an integer*

representing the frame").

Thus it would have been obvious to the person of ordinary skill in the art at the time of

the invention was made to combine the invention as taught by **Nakamura**, by implement the

unique word or flag in **Tanno**'s transmission timing information, with the motivation being to

improve the ability to carry out the radio link switching at appropriate timing while maintaining

in synchronization as disclosed in col. 7, lines 28-38; col. 8, lines 19-22.

- In regard to claims 4 and 6, **Tanno** discloses in Figs. 1-7, 10-13 and in the respective

portions of the specification about a base station used for the radio communication system

employing code division multiple access 'CDMA' for radio access with a plurality of mobiles

stations and providing multi-rate transmission (For example see Figs. 1, 10, 13; Abstract);

wherein the base station comprises a traffic control portion for deciding and transmitting the

spreading code and transmission timing (*"transmitting code and timing information"*; For

example see Figs. 4-7; col. 6, line 45 through col. 7, line 12) as the transmission permission

signal or on the basis of the state of traffic occurrence and usage as the indicating optimum

spreading code to the mobile station for using or "switching" (For example see col. 9, lines 21-

31; wherein the traffic control portion of the base station checks the state of traffic and utilization

for the decision of using the optimum transmission timing and spreading code, e.g. *"second*

code", instead of the desired or preassigned spreading code, e.g. "*first code*", being used by the

mobile station as transmission request signal through message channels). **Tanno** does disclose

about the base station in deciding the transmission timing and optimum spreading code for the

mobile station, but fails to explicitly disclose about the "*timing information regarding timing of*

switching" the first code to the second code. However, such implementation is known in the art.

For example, **Nakamura** discloses in Figs. 2A-B, 4, 20A-B, 25 and in the respective

portions of the specification about the method and apparatus for switching radio links in the

mobile communication (For example see Abstract); wherein each transceiver unit of the base

station includes the switching timing set up unit, the switching timing information changing unit

("*timing information sending unit*"), the spread code switching unit ("*code switch informing*

unit") and the control unit ("*switching unit*") as disclosed in Fig. 2B; for selecting and

transmitting the timing information and new spreading code ("*second code*"; wherein, it is

obvious that the being used spreading code is the "*first code*") to the mobile station for switching

the spreading codes in synch ("*switching in synchronization*") between the base station and the

mobile station, when detecting the link quality degradation, (For example see Figs. 4, 20A-B, 25;

col. 6, line 18 through col. 7, line 38). **Nakamura** further discloses about the timing carrying out

for radio link switching ("*timing information regarding timing of switching*") by using the

unique words in each frame for setting up the switching timing in prescribed frames, e.g. M and

N frames (For example see Figs. 4, 6-7; col. 8, line 64 through col. 9, line 12), or in frame

number (For example see Fig. 16; col. 14, lines 7-17), or in flag in each frame for period of time

in boundary of frames (For example see Figs. 8-15; col. 11, lines 50-59).

Thus it would have been obvious to the person of ordinary skill in the art at the time of

the invention was made to combine the invention as taught by **Nakamura**, by implement the

unique word or flag in **Tanno**'s transmission timing information, with the motivation being to

improve the ability to carry out the radio link switching at appropriate timing while maintaining

in synchronization as disclosed in col. 7, lines 28-38; col. 8, lines 19-22.

Response to Arguments

4.   Applicant's arguments filed on March 25th, 2005 have been fully considered but they are

not persuasive.

In response to Applicant's argument that the references fail to show a certain feature of

Applicant's invention, it is noted that the feature upon which Applicant relies (i.e., method for

transmitting "code information" and "timing information" to one of a plurality of terminals by

message where the message is not a Layer 1 construct and which is different from using Layer 1

bit data) is not recited in the rejected claim(s). Although the claims are interpreted in light of the

specification, limitations from the specification are not read into the claims. See *In re Van*

Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir.1993).

Conclusion

5.   Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is

reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this

final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Tri H. Phan, whose telephone number is (571) 272-3074. The

examiner can normally be reached on M-F (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Chau T. Nguyen can be reached on (571) 272-3126.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Alexandria, VA 22313

or faxed to:

(571) 273-8300

Hand-delivered responses should be brought to Randolph Building, 401 Dulany Street,

Alexandria, VA 22314.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).
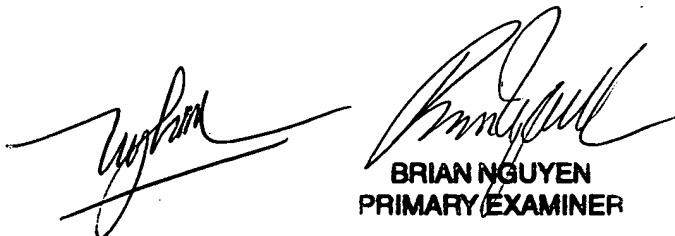
BRIAN NGUYEN
PRIMARY EXAMINER

Tri H. Phan
June 17, 2005